



3.20 ADDITIONAL LANDS AND CHANGED CIRCUMSTANCES

3.20.1 Effects of Acquisition of Additional Covered Lands Under the Proposed HCP

Based on the PALCO HCP IA, under the proposed HCP, PALCO may acquire up to 25,000 acres of additional lands that may become covered lands under the HCP as long as certain conditions outlined in the IA are met. For example, such lands must be located within one mile or within the external boundaries of the PALCO ownership covered under the HCP and must be zoned for timber production in order to be considered covered lands. Based on the proximity of these potential land acquisitions to the currently proposed HCP Planning Area and EIS/EIR analysis area, conditions outlined in the IA, and limitation of associated activities to those already covered under the HCP, effects on wildlife and fish associated with activities potentially occurring on additional lands would be expected to be similar to direct, indirect, and cumulative effects described in Sections 3.8 and 3.10. Moreover, as a condition of additional lands coverage, the IA specifies that “extension of the HCP provisions to the additional lands will not result in impacts not analyzed and mitigated under the HCP and will not result in unauthorized take under the State and Federal Permits” as determined by the agencies. Furthermore, the amount and timing of take of covered species expected to occur on the additional lands must be disclosed to the agencies. Other information (e.g., maps, a list of covered activities) must also be provided to the agencies. Thus, implementation of the IA

would ensure that potential impacts on wildlife from coverage of additional lands under the HCP and associated mitigation would be equivalent to those analyzed and addressed in the EIS/EIR.

Notable conditions of the IA regarding additional lands with respect to wildlife and fish consist of the following:

1. No old-growth habitat may be included and no additional take of marbled murrelets will be authorized under the state and federal permits within the additional lands.
2. Consistent with the northern spotted owl conservation plan, no take of northern spotted owls will be allowed on any additional lands during the first five years following issuance of the federal and state permits. Surveys for northern spotted owls shall be conducted for five years following acquisition, and all northern spotted owl sites located shall be added to the baseline population for northern spotted owls.
3. Notwithstanding the 50-year term of the permit, PALCO shall continue to apply the conservation and mitigation measures provided for under the HCP’s operating conservation program to additional lands, until the impacts of take resulting from covered activities on the additional lands have been fully mitigated in accordance with the IA.

Based on the above and other conditions presented in the IA, no effects on old growth and no take of (and thus no

significant effects on) marbled murrelets would be anticipated as a result of acquisition and coverage of additional lands under the HCP. Potential effects on northern spotted owls and other wildlife resources due to such action would be similar to those described in Section 3.10. Potential effects on fish and aquatic habitat would not be expected to be different than identified in Section 3.8. Furthermore, potential impacts of take to wildlife and fish species would be expected to be fully mitigated, as specified in the IA. PALCO is not precluded from adding additional acreage or acreage more than one mile from its current boundary by the IA. However, such new lands could require an HCP amendment in order to be included in the IA.

3.20.2 Effects of Changed Circumstances Under the Proposed HCP

As described in Chapter 1, the No Surprises Rule (Federal Register, 1998) generally states that, as long as an HCP is properly implemented, the federal government shall not require additional land or money from the permittee in the event of an "Unforeseen Circumstance," and that any additional measures to mitigate reasonably foreseeable "Changed Circumstances" will be limited to those changed circumstances specifically identified in the HCP (and only to the extent of the mitigation specified in the Plan). Accordingly, the proposed HCP and IA define and identify potential actions to address effects of unforeseen and changed circumstances on species covered under the HCP and ITP. With respect to changed circumstances, the HCP provides a complete and exclusive list of conservation and mitigation measures and/or planned responses that may be required of PALCO to respond to each changed circumstance affecting covered species. Changed circumstances addressed in the HCP and Agreement consist of the following: fire,

wind (e.g., windthrow), landslides, floods, earthquakes, oil spills, El Niño events, and legally changed circumstances (e.g., new listing of a species not covered under the federal or state ITP, and suspension, revocation, or relinquishment of either the NMFS or FWS Federal ITP). Detailed definitions of these events relative to the definition of a changed versus unforeseen circumstance are presented in the proposed HCP. Anticipated effects of these changed circumstances on wildlife resources in the HCP Planning Area under Alternatives 2 and 4 and associated proposed mitigation are described generally below (see PALCO [1998] for further discussion).

With respect to potential effects on wildlife and fish from changed circumstances related to relatively small, isolated fire, wind, landslide, and earthquake events (as defined in the HCP), the mitigation and minimization measures identified in the HCP are generally considered adequate to avoid significant effects on terrestrial wildlife species covered under the ITP, particularly given that such events have been occurring naturally in the ecosystem for hundreds of years and tend to be limited in scope and location relative to terrestrial wildlife. With respect to fish, the avoid and mitigate measures for landslides should minimize the potential effects to some extent. However, the HCP identifies additional mitigation and minimization measures for potential effects of such changed circumstances on aquatic species covered under the ITP, primarily relating to potential associated effects of increased sediment inputs into streams, which could detrimentally affect covered aquatic species, including amphibians, reptiles, and fish. To address such potential effects from fire, wind, landslides, floods, and earthquakes (meeting the definition of a changed circumstance) on aquatic species, PALCO and the agencies would conduct an expedited watershed analysis on the hydrologic unit impacted by

any such changed circumstance. Subsequently, appropriate measures would be developed to minimize to the extent practical the occurrence of sediment inputs that could accumulate with these events and negative impacts to the streams and covered aquatic species. In the interim, before completion of the watershed analysis, as deemed necessary by the agencies and in consultation with PALCO, measures would promptly be implemented to minimize such adverse effects to the extent feasible. However, ongoing covered activities may continue to use the existing operating measures until the new measures resulting from the watershed analysis are developed.

Regarding potential effects on wildlife from changed circumstances related to oil spills or El Niño events (as defined in the HCP), no additional changes to the mitigation or conservation measures identified in the HCP would be considered necessary. This conclusion is based on the assumption that an oil spill or El Niño event of sufficient magnitude to cause significant adverse impacts on the murrelet, coho salmon, or any other covered species would be considered an unforeseen circumstance rather than a changed circumstance. By definition, an unforeseen circumstance could not have been reasonably anticipated by the landowner and the agencies to occur at the time of the HCP development, and thus would not require the commitment of additional land, water, financial compensation, or additional restrictions on the use of land, water, or other natural resources, unless the landowner consented (see PALCO [1998]).

With respect to potential effects of legally changed circumstances on wildlife and fish under the proposed HCP related to new listing of a species not covered under federal or state ITPs, PALCO may, but is not required to, enter into negotiations with the agencies regarding any

modifications to the HCP considered necessary (if any) to cover such species under an amended ITP. If an agreement is reached under the framework of the IA, such measures may be implemented and the ITP amended to cover newly listed species. If an agreement cannot be reached, then PALCO must modify its activities as directed by the wildlife agencies to avoid likely jeopardy to, take of, or adverse effects on any designated critical habitats of any newly listed species. In the event of a legally changed circumstance related to suspension, revocation, or relinquishment of either the NMFS or FWS federal permit, significant effects on wildlife and fish resources would be avoided through procedures identified in the HCP. In such a circumstance, the agencies would reevaluate the remaining federal permit to ensure that continuation of one or more of the covered activities is not likely to jeopardize, take, or adversely modify the critical habitat, if any, of the covered species listed under the FESA and included on the suspended, revoked, or relinquished permit. Potential modifications considered necessary to avoid take or jeopardy would be identified by the agencies in consultation with PALCO and implemented. If PALCO disagreed with the modifications, it could invoke the dispute resolution process as outlined in the IA. PALCO could, however, still be required to implement the modifications identified as necessary by the agencies to avoid take, adverse modification of critical habitat, or jeopardy to the listed species on the revoked, suspended, or relinquished permit.

In summary, under the HCP for Alternatives 2, 2a, and 4, implementation of measures to address changed circumstances developed in consultation with the wildlife agencies, as described above, would be expected to avoid significant effects on wildlife and fisheries resources covered under the ITP.

3.20.3 Modifications to Changed Circumstances

The proposed HCP in Appendix P incorporates some modifications to the changed circumstances. In essence, the changes mean that circumstances PALCO would have to respond to with expedited watershed analysis encompass more events. These relate to fire, flood, and landslides. See Appendix P for details.